IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23..3..2007

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THE HONOURABLE MR. JUSTICE K. CHANDRU

Writ Petition Nos.2055 to 2060 of 2007
and
M.P.Nos.1 of 2007 in WP.Nos.2056 to 2060 of 2007

S.Viwanathan .. Petitioner in WP.2055 /07
S. Balasubramanian .. Petitioner in WP.2056 /07
K.R. Ramesh Babu .. Petitioner in WP.2057/07
K. Rathinavelu .. Petitioner in WP.2058/07
P. Pichaiyan .. Petitioner in WP.2059/07
E. Rajamohan .. Petitioner in WP.2060/07

Vs.

1. The Board of Directors,
Tamil Nadu Minerals Limited,
Kamarajar Salai, Chennai 5.

2. The Chairman and Managing Director,
Tamil Nadu Minerals Limited,
Kamarajar Salai, Chennai 5. .. Respondents in all WPs

W.P.2055 to 2060/2007:-Writ Petitions have been filed for issuance of writs of certiorari calling for the records relating to the impugned order of the first respondent passed in the Board Meeting held on 22.11.2006 and communicated to the petitioner by the second respondent in Proceedings
(i)No.Rc.No.21618/E1/06 dated 20.12.2006 (W.P.No.2055/07)
(ii) No.Rc.No.21094/E1/06 dated 26.12.2006 (W.P.No.2056/07)
(iii) No.Rc.No.20976/E1/06 dated 26.12.2006 (W.P.No.2057/07)
(iv) No.Rc.No.26068/E5/06 dated 26.12.2006 (W.P.No.2058/07)
(v)No.Rc.No.20836/E1/06 dated 26.12.2006 (W.P.No.2059/07)
(Vi)No.Rc.No.20977/E1/06 dated 26.12.2006 (W.P.No.2060/07)
respectively and quash the same.

For Petitioners : Mr.P. Rajendran
For Respondents : Mr.R.Viduthalai, AG
for Mrs.A.V. Bharathi

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COMMON ORDER

As the subject matter of these writ petitions are identical, all the writ petitions are dealt with together.

2. I have heard the arguments of Mr.P.Rajendran, learned counsel appearing for the petitioners and Mr.R.Viduthalai, learned Advocate General appearing for Mrs.A.V.Bharathi, learned counsel for the respondents and have perused the records.

3. The petitioners were all employed by the first respondent Tamil Nadu Minerals Limited [for short, 'TAMIN']. They were all charge sheeted on various charges. Some of the charges were serious and pending enquiry into the charges, they were kept under suspension by orders dated 24.6.2005. Subsequently, charge memos dated 04.8.2005 were given to M/s S.Viswanathan, S.Balasubramanian, K.R.Ramesh Babu, P.Pichaiyan and E.Rajamohan and in the case of K.Rathinavelu, charge memo dated 05.8.2005 was issued. Thereafter, their suspensions were revoked and they were restored to duty by an order dated 09.8.2005. After the conclusion of the enquiry, the petitioners were all punished and were given various punishments.

4. All the petitioners filed appeals on various dates to the Board of Directors of the TAMIN. Since the appeals were not disposed of expeditiously as expected by them, they moved this Court by way of writ petitions and this Court directed the TAMIN to dispose of the appeals within a fixed time limit ranging from four weeks to eight weeks. The Board, on consideration of the matter, thought fit that the punishment imposed on the petitioners was on the lower side and for the proven charges, they were to be given higher punishments. On this score, it was resolved in the Board meeting held on 22.11.2006 that the punishment given to the petitioners should be enhanced.

5. The following table will show the names of the petitioners, the designation held by them, punishments originally awarded by the competent authority as well as the enhanced punishment proposed by the Board.

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Sl. No.	W.P.No.	Name & Designation	Punishment imposed by the competent authority	Punishment proposed by the appellate authority
1	W.P.2055 of 2007	S.Viswanathan Divisional Manager Madhepalli	Reduction of lower time scale for 5 years	Reduction to next lower post for 5 years
2	W.P.2056 of 2007	S.Balasubramanian Deputy Manager (Quality Control) Manali, Chennai	Reduction of lower time scale for 5 years	Reduction to next lower post for 5 years
3	W.P.2057 of 2007	K.R.Ramesh Babu Factory Manager	Reduction of lower time scale for 5 years	Reduction to next lower post for 5 years
4	W.P.2058 of 2007	K.Rathinavelu Mine Mate Kodihalli quarry	Reduction of lower time scale for 5 years	Removal from service
5	W.P.2059 of 2007	P.Pichaiyan Assistant Accounts Officer, Tiles Plant	Reduction of lower time scale for 5 years	Reduction to next lower post for 5 years
6	W.P.2060 of 2007	E.Rajamohan Divisional Manager Krishnagiri	Reduction of lower time scale for 5 years	Reduction to next lower post for 5 years

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6. As against the said show cause notice, the petitioners have filed the present writ petitions and they have obtained an interim stay on 20.01.2007 and on being mentioned by the respondents, the matters were listed today.

7. With the consent of the parties, the main writ petitions themselves are taken up for final disposal.

8 Mr.P.Rajendran, learned counsel appearing for the writ

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petitioners submitted that the show cause notices enhancing the punishment suffer from serious irregularities and he listed the same. They are:-

(a) That the Managing Director, who was the competent authority, had also participated in the Board Meeting on 22.11.2006 and this will amount to bias being crept into the decision making process.

(b) In the show cause notice, the penalties were proposed by the Board and this will amount to pre-judging the issue.

(c) The Board has come to a definite conclusion on the imposition of penalties and it has merely delegated the Managing Director to implement its order by following the procedure will make the exercise an empty formality.

(d) The Board ought to have given opportunity to the petitioners to submit their explanation directly without expressing any opinion and should have considered the same on its own and they should have excluded the participation of the Managing Director in such a proceeding.

9. It is an admitted fact that the Managing Director, who was the competent authority had participated in the Board Meeting dated 22.11.2006 and there is nothing on record to show that he had excluded himself from the deliberations. This point was fairly conceded by the learned Advocate General. With reference to the procedure as to whether TAMIN has power to enhance penalty even on appeal filed by the employees, the position is clear and the Conduct, Discipline and Appeal Rules of the TAMIN clearly shows its powers to revise the punishment and the Regulations 4.10 and 4.11 found in Chapter 4 read as follows:

> 4.10 In the case of an appeal against an order imposing any of the penalities specified in Rule 4.1 the appellate authority shall consider whether the penalty imposed is adequate, inadequate of severe and pass orders:
>
> (i) Confirming, enhancing, reducing or setting aside the penalty or
> (ii) remitting the case to the authority which imposed the penalty with such direction as it may deem it in the circumstances of case.
>
> 4.11. Notwithstanding anything contained in the above Rules, the Board when not itself being the appellate authority is empowered to call for

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> the records of any disciplinary authority as it deems fit for enhancement, mitigation reduction or cancellation of punishments already imposed provided that such review shall be taken only after the expiry of the period of limitation of appeals or disposal of appeals where any such appeals had been preferred by observing the procedure laid down for the disposal of disciplinary cases."
>
> [Emphasis added]

Therefore, there can never be a challenge to the power of enhancement of punishment by the appellate Authority and the power is very much available. There is not only power to enhance the punishment while entertaining an appeal, but also there is power for the suo motu revision of an order passed by the competent authority available to the Board.

10. This only leaves open the other three issues. First relates to participation of the Managing Director, who is the competent authority, in the Board Meeting dated 22.11.2006 and whether that will vitiate the order of the Board. When the appellate Authority is empowered to interfere with the quantum of punishment, it will be against the canons of justice that the punishing authority is also part of the appellate mechanism.

11. The position of law in this regard has been made clear by judgment of the Supreme Court reported in (1986) 4 SCC 537 [INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA vs. L.K.RATNA AND OTHERS]. In that judgment, the Supreme Court clarified the position of an appellate authority with reference to the Institute of Chartered Accountants of India, a council established by an Act of Parliament. In this regard, it is useful to extract Paragraph Nos.25 and 26 of the said judgment and the same is extracted below:

"Para 25: "We must remember that the President and the Vice-President of the Council and three members of the Council compose the Disciplinary Committee. The President and the Vice-President do certainly hold significant status in the meetings of the Council. A member whose conduct has been the subject of enquiry by the Disciplinary Committee ending in conclusions adverse to him can legitimately entertain an apprehension that the President and the Vice-President of the Council and the other members of the Disciplinary Committee would maintain the opinion expressed by them in their report and would press for the acceptance of the report by the Council. To

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the member whose conduct has been investigated by the Committee, the possibility of the Council disagreeing with the report in the presence of the President and the Vice-President and the other members of the Committee would seem rather remote. His fears would be aggravated by the circumstances that the President would preside over the meeting of the Council, and would thus be in a position to control and possibly dominate the proceedings during the meeting. We do not doubt that the President and the Vice-President, and also the three other members of the Disciplinary Committee, should find it possible to act objectively during the decision-making process of the Council. But to the member accused of misconduct, the danger of partisan consideration being accorded to the report would seem very real indeed.

Para 26: The objection on the ground of bias would have been excluded if the statute had expressed itself to the contrary. But nowhere do we find in the Act any evidence to establish such exclusion. It is true that by virtue of Section 17(3) it is obligatory that the Disciplinary Committee should be composed of the President and the Vice-President of the Council and three other members of the Council. While that is so, there is nothing in the Act to suggest that the meetings of the Council must always be presided over by the President or the Vice-President, and that no meeting can be held in their absence. We find that Regulation 140 framed under the Act contemplates that the Council may meet in the absence of the President and the Vice President, and provides that in their absence a member elected from among the members who are present should preside. There is an element of flexibility which makes it possible for the Council to consider the report of the Disciplinary Committee without the participation of the members of the Committee. Because of the 'flexibility' potential in the scheme, the doctrine of necessity, to which reference has been made on behalf of the Institute, cannot come into play. We must admit that it does appear anomalous that the

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> President and the Vice-President of the Council should be disabled from participating in a meeting of the Council because they are bound by statute to function as the Chairman and the Vice-Chairman of the Disciplinary Committee, and were it not for the factor of flexibility which we see in the scheme, we would have been compelled to the conclusion that the Act implies an exclusion of the doctrine of bias."

12. This legal proposition was also followed by a Division Bench of this Court in its decision reported in 2006 WLR 855 [The syndicate, Anna University, Chennai and others vs. Dr.N.Lingappan and others] to which myself is a party and held that such a conduct of the punishing authority being part of the appellate mechanism was illegal and the order of the appellate authority was quashed on that ground. This leads to the next question as to whether the punishment can be proposed in the show cause notice and whether it will amount to pre-judging the issue.

13. In this context, it is relevant to point out the stage in which the notice is given, is only for the purpose of exercising the power under Regulation 4.10 where it clearly says that the appellate authority can confirm, enhance, reduce or set aside the penalty. In the present case, the appellate authority has chosen to enhance the punishment. Therefore, necessarily the mind of the appellate authority has to be indicated without which no worthwhile explanation can be given by the petitioners. In fact, the very purpose of giving show cause notice is only to obtain an explanation from the concerned individuals and only after consideration of such explanation, the orders can be confirmed or given up. If the authorities do not indicate the nature of punishment in the show cause notice, no kind of explanation by an employee can be given to the satisfaction of the appellate authority.

14. In a different context, the Supreme Court on the question of considering the nature of notice issued to Government servants on the Government servants being convicted by Criminal Courts, vide its decision reported in 1985 (3) SCC 398 [Union of India and another vs. Tulsiram Patel]. In the following passages found at page 493, in paragraph 14 and 15, it was held as follows:

Para 14: "The consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be ex parte and where the disciplinary authority comes to the conclusion that the penalty which the facts and circumstances of the

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case warrant is whether of dismissal o removal or reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be afforded to the delinquent government servant. Undoubtedly, the disciplinary authority must have regard to al the facts and circumstances of the case as set out in Challappan case. As pointed out earlier, considerations of fair play and justice requiring a hearing to be given to a government servant with respect to the penalty proposed to be imposed upon him to do not enter into the picture when the second proviso to Article 311 (2) comes into play and the same would be the position in the case of a service rule reproducing the second proviso in whole or in part and whether the language used is identical with that used in the second proviso or not. There are a number of orders which are of necessity passed without hearing the party who may be affected by them. For instance, courts of law can and often do pass ex parte and interim orders on the application of a plaintiff, petitioner or appellant without issuing any notice to the other side or hearing him. Can it, therefore, be contended that the judge or judges, as the case may be, did not apply his or their mind while passing such an order?

Para 15: ... The decision in Challappan case is, therefore, not correct with respect to the interpretation placed by it upon Rule 14 of the Railway Servants Rules and particularly upon the word 'consider' occurring in the last part of that rule and in interpreting Rule 14 by itself and not in conjunction with the second proviso to Article 311 (2)..."

Therefore, setting out the nature of enhanced penalty proposed would not vitiate the order issued by the TAMIN.

15. Whether the Board was proper in authorising the second respondent Managing Director only to implement the enhanced punishment as per the procedure is an issue which requires consideration. This, undoubtedly, would amount to concluding the issue without there being any opportunity for the petitioners to explain the circumstances in which the Board must take lenient view. The Board cannot pass a two-in-one order, thereby making the explanation to be submitted an empty formality. But the following passage found in one of the order impugned in the writ petition will clearly show as to how the Board has gone wrong in exercising the power under paragraph 14.10 of the Regulation.

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"The Board felt that the offence committed is of very serious nature. The wealth of TAMIN was squandered, leakage of revenue by deliberate incorrect measurement cannot be viewed leniently as TAMIN sells granite blocks only by volume and TAMIN's survival and growth depends on realisation of correct sales revenue. Accordingly, no lenient view is deserved in his case.

The Board therefore decided that the punishment of 'Reduction to a lower time scale for five years' awarded in the Chairman and Managing Director's proceedings dated 21.6.2006 is not adequate and resolved to enhance the said punishment as "Reduction to next lower post with lower time scale for five years' and to dispose the appeal petition accordingly.

The Board authorised the Chairman and Managing Director to implement the enhanced punishment to the above individual as per procedure.

[Emphasis added]

16. If this is the stand of the TAMIN, then there was no necessity to call for any explanation. Further, there is no indication in the proceedings that the Board will consider the explanation of the petitioners as they have already abdicated the power of consideration of the explanation and merely authorised its delegate to implement it by following the procedure. This is not a correct method of interpreting the Rule 14.10. Under these circumstances, this Court has no hesitation to set aside the impugned order dated 26.12.2006.

17. In the light of the above, the following directions are issued:

(i) All the show cause notices dated 26.12.2006 and the minutes of the Board Meeting dated 22.11.2006 are hereby set aside.

(ii) The Board is directed to issue show cause notices afresh to the petitioners without expressing any finality to the proposed punishment and only indicate as to what would be the proposed punishment if the Board disagrees with the petitioners.

(iii) The Managing Director, who is the punishing authority and who has imposed the original punishment, should be precluded from participating in the Board Meeting when the issue is considered by the Board.

(iv) After getting the explanation from the petitioners, the Board must consider that

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explanation in a properly convened Board meeting and take a final decision on the explanation submitted by the writ petitioners.

18. The writ petitions shall stand disposed of accordingly. However, there will be no orders as to costs. Connected Miscellaneous Petitions will stand closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Board of Directors,
   Tamil Nadu Minerals Limited,
   Kamarajar Salai, Chennai 5.

2. The Chairman and Managing Director,
   Tamil Nadu Minerals Limited,
   Kamarajar Salai, Chennai 5.

6 ccs to M/s. A.V. Bharathi, SR. Nos.18239, 18240, 18241, 18242, 18243, 18244
6 ccs to M/s. P. Rajendran, Sr. Nos.18532, 18533, 18534, 18535, 18536, 18537

WP.Nos 2055 to 2060/2007

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